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10/034,073	12/28/2001	Tetsuya Nagano	NGB-12833	2231

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EXAMINER

LONEY, DONALD J

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/034073

Applicant(s)

Nagano et al

Examiner

D. Eoney

Group Art Unit

1772

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 06/09/2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-7 is/are pending in the application.
- Of the above claim(s) 4, 6, 7 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-3 and 5 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. Applicant's election without traverse of Group I in Paper No. 5 is acknowledged.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

3. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
4. Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by any of Iida et al, Okayama et al, Negishi or Genovese.

All of the above teach a grating with a flat groove bottom (i.e., the section between the bumps as shown by applicants Figure No. 1D) and a non-laminar shape. Refer to Fig. No. 7 in Iida et al. Refer to Fig. Nos. 2 and 8 in Okayama et al. Refer to Fig. No. 9 in Negishi. Refer to Fig. Nos. 3A and 3B in Genovese.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Iida et al, Okayama et al, Negishi or Genovese.

The primary references teach the invention substantially as recited except for the duty ratio of .5 (i.e., the groove width (a) and groove cycle (b) being equal).

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It is known in the art to for a grating with a desired spacing of the grooves in order to control the degree of diffraction. See Negishi column 6, lines 38-52 and Genovese column 7, lines 33-46.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to the primary references to evenly space the grooves and/or bottom part for the purpose of diffracting light as desired there from. The primary references show that the grating can be of different types.

7. Any inquiry concerning this communication should be directed to D. Loney at telephone number 703-308-2416.

D. Loney/mn  
August 28, 2003



DONALD J. LONEY  
PRIMARY EXAMINER